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3 BEFORE THE STATE OF WASHINGTON  
4 ENERGY FACILITY SITE EVALUATION COUNCIL  
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10 In the Matter of Application No. 99-1:  
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13 SUMAS ENERGY 2 GENERATION  
14 FACILITY  
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**SE2'S MOTION TO STAY  
COUNCIL ORDER NO. 754**

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19 The Applicant, Sumas Energy 2, Inc. (SE2), hereby moves this Council to stay the  
20 effectiveness of Council Order No. 754 and to postpone transmitting its recommendation  
21 regarding the Sumas Energy 2 Generation Facility to the Governor pending filing and  
22 resolution of motions for reconsideration.  
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27 The Council's adjudicatory proceedings are governed by the Energy Facility Siting  
28 Statute, RCW chapter 80.50, the Council's regulations, WAC Title 463, and the Washington  
29 Administrative Procedure Act, RCW chapter 34.05. Section 34.05.470 of the Administrative  
30 Procedure Act and Section 463-30-335 of this Council's regulations authorize any party to  
31 file a Motion for Reconsideration within 10 days after the Council issues a Final Order.  
32 Section 34.05.467 also authorizes this Council to stay the effectiveness of a Final Order  
33 pending the resolution of a Motion for Reconsideration.  
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41 Based on our initial review of Council Order No. 754, SE2 intends to file a Motion  
42 for Reconsideration. We note that in the Council's proceedings regarding other projects, the  
43 Council has typically not issued a Final Order as its first decision on a project. Instead, the  
44 Council has issued an Initial Order and then allowed parties to file comments and objections  
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1 prior to issuing a Final Order. Moreover, in most such cases, the Council has ultimately  
2 issued a Final Order that reflects changes made in response to comments and objections filed  
3 regarding the Initial Order. In this case, however, the Council issued a Final Order, without  
4 first publishing an Initial Order, and provided no opportunity for comment by intervenors or  
5 SE2. SE2 believes that its Motion for Reconsideration will present this Council with  
6 compelling reasons to reconsider its decision and to amend its recommendation regarding the  
7 project. Therefore, forwarding the recommendation to the Governor at this point would be  
8 premature.

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10 First, a stay is necessary to allow meaningful opportunity for reconsideration based on  
11 SE2's pending motion and potential motions by other parties. Without a stay, the Governor  
12 could act upon the current recommendation before the Council considers and rules on  
13 motions for reconsideration and potentially alters its Final Order. Although the statute  
14 provides the Governor with 60 days in which to make his decision, it does not require the  
15 Governor to wait 60 days before rendering his decision. Second, it would be inefficient for  
16 the Governor and his staff to devote time and resources to analyzing a recommendation that  
17 could change. Concurrent consideration and reconsideration by the Governor's office and  
18 EFSEC, respectively, also creates the possibility of conflicting decisions.

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20 The Council should stay the effectiveness of its Final Order and postpone delivery of  
21 that Order to the Governor until the Council has resolved all Motions for Reconsideration.  
22 Such a stay would promote justice and efficiency, and it would not prejudice any party to  
23 these proceedings.<sup>1</sup> Accordingly, for the reasons outlined above, we now ask this Council to

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<sup>1</sup> We note that, as Judge Thomas and the Council's chair are aware, SE2 attempted to make this motion orally at the Council's February 16, 2001, meeting in Bellingham. The Council held that meeting for the purpose of issuing its Final Order in the Adjudicatory Proceedings, as governed by

1 stay Order No. 754 and postpone forwarding it to the Governor's office pending resolution of  
2 motions for reconsideration.  
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4 DATED: February \_\_\_, 2001  
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8 **PERKINS COIE LLP**  
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41 Administrative Procedure Act sections 34.05.410 to 34.05.476. We believe the meeting was a part of  
42 the Council's adjudicatory proceedings and, therefore, that the Applicant was entitled to make a  
43 motion at that time. Moreover, because all parties to the adjudication were on notice of that meeting  
44 and most parties were present or represented by counsel at the meeting, we believe that an oral  
45 motion during that meeting would have provided the best opportunity for all parties to respond to the  
46 motion and the Council to make a decision. Unfortunately, the Council refused to permit the  
47 Applicant to make the motion at that time, and indicated that Order No. 754 would be forwarded to  
the Governor's office on the morning of Monday, February 19, 2001.